



A LEGAL GUIDE FOR YOUR CHURCH - UPDATED 12/20/21

OSHA Private Employer Vaccine Mandate

Information for Churches
with 100 or More Employees

ALLIANCE DEFENDING FREEDOM

CHURCH ALLIANCE



INTRODUCTION

In September 2021, President Joe Biden announced that he would direct the Occupational Safety and Health Administration (OSHA) to make a new “workplace safety” rule: any employer with 100 or more employees must require its employees to be vaccinated against COVID-19 or submit to weekly COVID-19 testing and masking. Noncompliance could result in steep fines for employers and job loss for employees.

The OSHA Emergency Temporary Standard (ETS) was formally [issued](#) on November 5, 2021. Almost immediately, multiple lawsuits were filed across the country by private employers and states, challenging the ETS. This includes four cases filed by ADF.

On November 12, the U.S. Court of Appeals for the Fifth Circuit reaffirmed its prior decision to stay enforcement of the mandate. The Court said that OSHA should “take no steps to implement or enforce the Mandate until further court order.” All pending OSHA mandate cases were then [consolidated and transferred](#) to the U.S. Court of Appeals for the Sixth Circuit. On December 17, a three-judge panel for the Sixth Circuit lifted the stay previously issued by the Fifth Circuit that had halted enforcement of the vaccine mandate. In a separate order only days before, a group of eight judges on the Sixth Circuit indicated their view that the mandate is unlawful. The Sixth Circuit’s panel decision on December 17 prompted ADF attorneys to seek emergency relief from the U.S. Supreme Court. And on December 20, the federal government was ordered to respond to the request for emergency relief by December 30.

Please continue to monitor our website for updated information.

While people of faith may have different opinions about COVID-19 vaccines, this issue isn’t about vaccines. It’s about the blatant overreach by the federal government and the violation of the autonomy of religious organizations. After all, the government has no business involving itself in the internal affairs of religious organizations.



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4 KEY TAKEAWAYS

01

Who Is Impacted

All employers, including churches, with 100 or more employees will be impacted by this mandate.

The mandate also applies to employees that report to a worksite at least once in a 7-day period. It does not include remote employees who do not interact with coworkers or clients, employees who work from home, and employees who exclusively work outdoors.

02

The Requirements

Vaccination

Employers with 100 or more employees will need to verify their employees' vaccination status by January 10, 2022. Additionally, they must also implement a workplace policy by January 10, 2022, that requires all employees to either be vaccinated or submit weekly COVID-19 tests and wear masks while in the workplace.

The employer's policy goes into effect on February 9, 2022, pending current legal challenges. The mandate also requires employers to provide up to four hours of paid time off for employees to receive each dose of the COVID-19 vaccine. Additionally, employers must provide reasonable paid time off for recovery after vaccination, if necessary.

Testing

Employees that are unvaccinated or partially vaccinated must take a COVID-19 test once every seven days. Self-administered tests are not allowed unless observed by the employer or an authorized telehealth proctor.

Employees who test positive for COVID-19 must promptly alert their employer, and the employee must leave the workplace or be removed by the employer. If an employee tests positive, the employee is not required to take another COVID-19 test for 90 days following the positive test result.

If an employee does not provide his or her test result, the employer must remove the employee from the workplace.

Employers are not required to pay for COVID-19 testing of unvaccinated employees unless that is required by other laws, regulations, or collective bargaining agreements.

4 KEY TAKEAWAYS

02 (continued)

The Requirements

Masking

Unvaccinated employees must wear masks over their noses and chins while in the workplace. OSHA encourages employees to report any employers who do not enforce the masking rule.

Record Keeping & Reporting

Employers must provide their employees with a copy of their own vaccination, testing, and masking policies, as well as the CDC guidance on vaccines.

Employers must maintain a record of each test result and medical records standards apply.

Upon request of an employee, employers must make an employee's testing and vaccination records available by the end of the next business day.

Upon request of an employee, an employer must also make available the total number of fully vaccinated employees and the total number of employees by the end of the next business day.

Upon request of OSHA, employers must provide their vaccine, testing, and masking policies, and the number of fully vaccinated employees within four business hours.

Additionally, the employer must report each work-related COVID-19 fatality to OSHA within eight hours of learning about it. Employers must also report each work-related COVID-19 hospitalization to OSHA within 24 hours of learning about it.

03

Timeline

By January 10, 2022:

- Employers must determine the vaccination status of employees.
- Employers must develop and implement their policy - either mandatory vaccination of all employees or weekly testing and masking for employees who choose to remain unvaccinated.

By February 9, 2022:

- Employers that have established a vaccination or testing and masking policy must have all their employees fully vaccinated against COVID-19 and begin weekly testing and masking of unvaccinated employees.

04

Penalties

The ordinary penalty for violating an OSHA regulation is up to \$14,000 per violation, and up to nearly \$140,000 per willful violation.

LEGAL HELP FOR YOUR CHURCH

During the COVID-19 pandemic, many churches have faced unprecedented challenges, and the ADF Church Alliance team has had the opportunity to provide religious liberty legal help to countless churches across all 50 states. The government is once again trying to illegally interfere with the internal matters of religious organizations.

Alliance Defending Freedom is here to help advocate for churches like yours through our legal membership program, the ADF Church Alliance. As a member, your church will have access to numerous benefits, including:

»» **Religious Liberty Document Review:**

ADF reviews your church's documents to help maximize religious freedom protections.

»» **Direct Access to Attorneys:**

Consult with ADF attorneys about your religious liberty questions.

»» **Pro Bono Legal Representation:**

ADF may represent your church in cases involving its religious freedom, if necessary and appropriate.

»» **Legal Resources:**

Specialized resources such as webinars and newsletters tailored to protecting the religious liberty of churches across the country.

You don't need to navigate religious freedom issues alone; we are eager to help you and your leadership team, especially during this unprecedented time.

[Click here](#) or visit ADFChurchAlliance.org to learn more about how membership can help your church.



The information included in this guide is designed to be an educational resource and does not constitute legal advice. To obtain legal advice, please contact an attorney at ADF.